IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI, FIRST JUDICIAL DISTRICT.

SEPTEMBER TERM, 1964.

No. .....

HERBERT H. HODGES AND WIFE, FRANCES A. HODGES,

Complainants,

versus

W. H. YATES, JOHN W. GARY, STATE STOVE MANUFACTURING COMPANY, PLUMBING WHOLESALE COMPANY and ORGILL BROTHERS HARDWARE COMPANY,

Defendants.

BILL FOR ATTACHMENT IN CHANCERY.

TO THE HONORABLE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI:

Come now Herbert H. Hodges and wife, Frances A. Hodges, complainants in the above styled and numbered cause, and file this their Bill For Attachment in Chancery against W. H. Yates, John W. Gary, State Stove Manufacturing Company, Plumbing Wholesale Company and Orgill Brothers Hardware Company, defendants, and in support thereof, would respectfully show unto the Court that:

I.

Complainants, Herbert H. Hodges, and wife, Frances A. Hodges, are adult resident citizens of Web-

ster County, Mississippi. The defendants, W. H. Yates and John W. Gary, are both adult resident citizens of Webster County, Mississippi, and are partners engaged in the general contracting business with their principal place of business located in the City of Eupora, Webster County, Mississippi. The defendant, State Stove Manufacturing Company, is a foreign corporation duly organized, chartered and existing under and by virtue of the laws of the State of Tennessee, and said corporation is domiciled in Ashland City, Tennessee, but said corporation has not qualified to do business in Mississippi, and is not available for personal service of process. The defendant, Orgill Brothers Hardware Company, is a foreign corporation duly organized, chartered and existing under and by virtue of the laws of the State of Delaware, but said company is authorized to do, and is doing, business in the State of Mississippi, and its duly appointed agent for service of process is Sam McElveen of 301-11 West Pearl Street, Jackson, Hinds County, Mississippi. Complainant has been reliably informed and verily believes, and upon such information and belief, charges that the defendants, Plumbing Wholesale Company and Orgill Brothers Hardware Company are in possession of property or funds or both belonging to the defendant, State Stove Manufacturing Company, that is subject to attachment in this cause. The defendant, Plumbing Wholesale Company, is a Mississippi Corporation domiciled in Hinds County, Mississippi, and its duly appointed agent for the service of process is Charles E. Warwick, 825 Bailey Avenue, Jackson, Mississippi.

II.

During the year 1962, the defendants, W. H. Yates, and John W. Gary, partners, constructed a residence or dwelling house for the plaintiffs upon their property in Webster County, Mississippi, located approximately three miles west of Eupora, Mississippi on the north side of, and adjacent to, U. S. Highway 82. It was understood and agreed between the complainants and said defendants that the construction by said defendant contractors of a dwelling for the complainants was to be a "lock and key" job and all work in connection therewith was performed by, or under the direct supervision of, these defendants.

III.

Complainants would further show unto the Court that during the course of the construction by defendants, W. H. Yates and John W. Gary, of their dwelling, said defendants purchased and installed in the residence of complainants a hot water heater that was manufactured by the defendant, State Stove Manufacturing Company. Subsequent to the purchase and installation of said hot water heater manufactured by State Stove Manufacturing Company, said hot water heater exploded and was blown through the roof of complainants' residence, thereby causing the damages hereinafter set forth. The said hot water heater propelled through the roof of complainants' residence and landed in a field approximately 200 feet north of complainants' residence, said explosion having occurred on or about July 26, 1963.

IV.

Complainants charge that said hot water heater installed in their residence was defective and negligently manufactured. The defendant, State Stove Manufacturing Company, was under a duty to use due care to manufacture and sell only such hot water heaters as are safe and in proper operating condition. Complainants charge further that said defendant, State Stove Manufacturing Company, wholly failed to perform said duty in the instant case, and in support thereof would show unto the Court that the bottom of the tank on said hot water heater had been broken and damaged and had been patched and welded before it was installed in the complainants' home. As a proximate result of the negligence and failure to use due care in the manufacture of said hot water heater by the defendant, State Stove Manufacturing Company, the explosion described hereinabove occurred, thereby causing the complainants to sustain the damage set forth herein below.

V.

The complainants say further that the hot water heater installed in their residence was under the exclusive management and control of the defendant, State Stove Manufacturing Company, when it was being manufactured, and that an explosion such as occurred in the instant case does not happen in the ordinary course of events if the manufacturer of said hot water heater uses proper care in the manufacture

thereof. Complainants further say that they were not guilty of any negligence whatsoever in connection with the operation of said hot water heater, and as a result thereof, the defendant, State Stove Manufacturing Company, is liable for the complainants' damages set forth herein under the doctrine of "Res Ipsa Loquitor".

VI.

The complainants have been reliably informed and verily believe, and upon such information and belief, charge that the defendants, Orgill Brothers Hardware Company and Plumbing Wholesale Company are now indebted to the defendant, State Stove Manufacturing Company, and have in their possession and under their control certain funds or property or both belonging to said defendant, State Stove Manufacturing Company. The exact amount of said funds or property or both will be presently remitted by said defendants, Orgill Brothers Hardware Company and Plumbing Wholesale Company, to the defendant, State Stove Manufacturing Company unless prevented by the process of this Court.

VII.

Complainants further charge that the explosion of their hot water heater was caused by the concurring negligence of the defendants, W. H. Yates and John W. Gary, partners, in that they secured a pressure relief valve and carelessly, negligently and improperly

installed said pressure relief valve in the cold water line of the hot water heater instead of the hot water line as they were duly required to do. Complainants would further show that said defendants, W. H. Yates and John W. Gary, held themselves out to the public and to your complainants as being skilled and experienced general contractors capable and qualified to construct a dwelling and to furnish and install any and all appliances desired or needed in connection therewith, including a hot water heater. Complainants further say that said defendants, W. H. Yates and John W. Gary, were required to install the hot water heater of complainants in such a manner so as to not endanger the property, health, lives and safety of complainants, and that said defendants knew, or should have known, that if the pressure relief valve was negligently and carelessly installed in the cold water line of said hot water heater instead of the hot water line as required, an explosion would likely result therefrom, thereby causing property damage or personal injuries or both. Notwithstanding their knowledge of the dangers instant to the negligent and improper installation of said pressure relief valve in said water heater, the defendants, W. H. Yates and John W. Gary, in person or by and through their agents, servants and employees negligently failed to properly install the pressure relief valve in the hot water heater by placing the same in the cold water line of said water heater when complainants' residence was constructed. As a direct and proximate result of said negligent installation of said pressure relief valve, said explosion particularized hereinabove

occurred, thereby causing the complainants to sustain the damages hereinafter set forth.

VIII.

Complainants would further show unto the Court that as a direct and proximate result of the joint and several negligence of the defendants specified hereinabove, and the explosion which ensued therefrom, the complainants' home was destroyed and made totally unfit for any further occupancy. As more particularly shown by the exhibit attached hereto as Exhibit "A" and made a part hereof by this reference thereto, the estimated replacement cost after said explosion was $14,269.96. The salvagable materials totaled $632.00 thereby making the net loss to complainants as a result of the destruction of their house $13,637.96. In addition thereto, complainants would further show that they lost their entire collection of household furniture, fixtures, equipment and clothing. Complainant, Herbert H. Hodges, is a retired psychiatric technician and was previously employed by the State of California. In the period of time that complainant resided in California, he acquired items of rare and expensive furnishings and equipment which cannot be replaced by these complainants, and many other items were destroyed due to the negligence of these defendants that were items of inherent, intrinsic and sentimental value to the complainants far beyond their commercial value. The replacement of these items required not only the expenditure of the sums of money hereinafter specified, but also the expending of

time and effort by complainants in acquiring a completely new set of household furnishings. Complainants would further show that the items which were lost and destroyed as a result of the explosion caused by the negligence of these defendants are set forth in Exhibit "B" to this bill, itemized and evaluated by complainants' best estimate of the fair market value thereof at the time of their loss, and complainants request that Exhibit "B" be incorporated in this bill as a part hereof as if fully copied herein. Exhibit "B", listing the items so lost by these complainants, shows damage to plaintiffs in the amount of $9,4[illegible]00. In addition thereto, complainants lost time and incurred additional expenses as a result of having to find a place to live while their residence was being rebuilt, preparing the inventory of lost property, and replacing the household furniture, fixtures, equipment and clothing destroyed in the explosion. As a result thereof, complainants demand damages for said expense and loss of time in the sum of $2,500.00.

PRAYER.

Wherefore, premises considered, complainants pray that the funds or property or both in the hands of said resident corporation defendants, Orgill Brothers Hardware Company, and Plumbing Wholesale Company, belonging to the defendant, State Stove Manufacturing Company, be attached and that said resident corporation, Orgill Brothers Hardware Company, and Plumbing Wholesale Company, be summoned personally in the manner provided by law in cases of attachment in Chancery; complainants pray further that the defendants, W. H. Yates and John W. Gary, and said

nonresident corporation, State Stove Manufacturing Company, be summoned in the manner provided by law. Complainants pray that all of said defendants be summoned so that they will be required to answer this bill at the next regular term of this Court, to-wit, on the second Monday of September, 1964; but defendants shall not be required to answer under oath, answer under oath being hereby waived. Complainants further pray that upon a final hearing in this cause, complainants be granted a judgment against the defendants, W. H. Yates and John W. Gary, individually, and as partners, and against the defendant, State Stove Manufacturing Company, jointly and severally, in the principal sum of $25,537.96, together with all court costs which may accrue herein. Complainants further pray that the property, funds and effects in the possession and control of the defendants Orgill Brothers Hardware Company and Plumbing Wholesale Company, belonging to the non-resident corporation, State Stove Manufacturing Company, be delivered to this Court or to complainants, and the value of the same be applied to payment of the judgment herein prayed for; and complainants pray for such other and further relief, both general and special, as in equity they may be entitled, as in duty bound they will ever pray.

Respectfully submitted,

HERBERT H. HODGES AND
WIFE, FRANCES A. HODGES,
Complainants.

WILLIAM H. JOLLY AND
THREADGILL & HICKS,

Their Attorneys.

By: .....

STATE OF MISSISSIPPI,
COUNTY OF .....

Personally appeared before me, the undersigned notary public in and for said county and state aforesaid, Herbert H. Hodges, one of the complainants, who, being by me first duly sworn, on his oath, deposes and says that the allegations contained in the foregoing bill for attachment in Chancery are true and correct as therein stated.

.....
HERBERT H. HODGES.

Sworn to and subscribed before me on this the .... day of ....., 1964.

.....
(Seal) Notary Public.

My commission expires: .....

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI.

No. 65,807.

HERBERT H. HODGES AND WIFE, FRANCES A. HODGES,

Complainants,

versus

W. H. YATES, JOHN W. GARY, STATE STOVE MANUFACTURING COMPANY, PLUMBING WHOLESALE COMPANY, AND ORGILL BROTHERS HARDWARE COMPANY,

Defendants.

ANSWER OF STATE STOVE MANUFACTURING COMPANY.

Now comes State Stove Manufacturing Company, one of the defendants herein, by its attorneys, and for answer to the bill of complaint exhibited against it says:

1.

This defendant admits the allegations of residence in paragraph 1. This defendant avers that the attachment defendants, Plumbing Wholesale Company and Orgill Brothers Hardware Company, have now been dismissed from this suit.

2.

This defendant does not answer paragraph 2 of the complaint as no allegations therein pertain to it; however, if complainants intend by paragraph 2 to make any allegations against this defendant, then this defendant does not have any knowledge and has been unable to obtain any information upon reasonable inquiry as to the truthfulness of the allegations of said paragraph 2 and this defendant denies paragraph 2.

3.

This defendant has no knowledge and has been unable to obtain any information on reasonable inquiry as to the truthfulness of the averments of paragraph 3 of the complaint and this defendant denies the allegations of said paragraph, except this defendant admits a hot water heater manufactured by it was placed in complainants' residence.

4.

This defendant denies the allegations of paragraph 4.

5.

This defendant denies the allegations of paragraph 5.

6.

This defendant makes no answer to paragraph 6 of the complaint but avers an order of dismissal has been entered herein whereby Orgill Brothers Hardware Company and Plumbing Wholesale Company have been dismissed as defendants in this cause.

7.

There being no allegations in paragraph 7 of the complaint against this defendant, same is not answered, except this defendant avers it had nothing whatever to do with the installation of the hot water heater and is not guilty of any negligence or wrongdoing which proximately contributed to or caused the occurrence complained of in the complaint.

8.

This defendant denies the allegations of paragraph 8 of the complaint and denies complainants, or either of them, are entitled to judgment against it in any amount.

And for further answer to the complaint and by way of plea thereto, this defendant says:

(a) This defendant was not guilty of any negligence whatsoever in the manufacturing of the heater described in the bill of complaint, but, on the other hand, fulfilled each and every duty owed to complainants. This defendant had nothing whatsoever to

do with the installation of the hot water heater in complainants' residence or with the attachment of valves thereto, it being necessary that the installer or owner of said hot water heater attach certain valves thereto. This defendant had no knowledge whatever concerning the purchasing and installation of said hot water heater in complainants' residence. There was attached to the heater at the time it left the possession of this defendant certain instructions for installation and operation of the heater. This defendant avers the instructions for the installation and operation of the heater and the attachment of certain parts thereto, which were not furnished by this defendant, were not followed and said heater was not properly installed. That such improper installation was the sole proximate cause of the occurrence complained of in the bill of complaint and this defendant is not responsible therefor.

(b) This defendant further avers that on the date of the occurrence complained of a severe lightning storm took place and struck complainants' residence or wires leading thereto and was the sole proximate cause of the occurrence complained of for which this defendant is not responsible.

(c) That the hot water tank and the installation thereof was open and obvious to complainants and said tank had been in complainants' exclusive possession for a long period of time. That if this defendant was in any way negligent in the manufacturing of said heater, which is denied, the condition thereof was

open and obvious to complainants and they assumed the risk of an occurrence taking place by continuing to use said heater.

And now having fully answered, this defendant prays that it be dismissed with its costs.

STATE STOVE MANUFACTURING COMPANY,
Defendant,
By BUTLER, SNOW, O'MARA, STEVENS & CANNADA,
By .....
Its Attorneys.

MISSISSIPPI CHANCERY PRACTICE—GRIFFITH.

Section 186. The general prayer.—In addition to the special prayer the complainant should never omit to include a prayer for general relief, for under a prayer for general relief the court will extend to the complainant such redress as will be agreeable to the case made out by the bill whether or not specially mentioned or prayed in the bill, and especially so if it will not cause surprise or prejudice to the defendant. Under the prayer for general relief the complainant may have any other relief than that specifically prayed if it be within the scope of the facts of the bill, and not inconsistent with the purpose of the bill, and which cannot be said to surprise the defendant. It was formerly the rule that no relief could be granted under the general prayer which was inconsistent with that specifically prayed. In our modern practice the rule is more liberal, and under the general prayer any

relief consistent with the bill and within its scope may be afforded, though it be inconsistent with the specific relief prayed. But the relief must yet be such as can be afforded on the facts stated, and it must appear that the defendant is fairly appraised by the bill that the relief is sought by the complainant. As a further evidence of a growing liberality towards the true ends of justice, as distinguished from the consecration of technicality formerly so often witnessed, it was held in one of our cases that when all the facts are stated it is immaterial that the complainant may have called them by the wrong name, the court saying further in that case: "And to the objection that no other relief can be granted than that specifically prayed, or of the same character, because the prayer for general relief is in the conjunctive instead of the disjunctive, we have only to say that the day has long passed, in which such objections can be regarded in courts administering justice."